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**FILED**

MAY 22 2015  
Clerk, U S District Court  
District Of Montana  
Billings

**ATTORNEYS FOR PLAINTIFF  
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**JOSEPH DAVID ROBERTSON,**

**Defendant.**

**CR 15-07 -H- SEH**

**INDICTMENT**

**UNAUTHORIZED DISCHARGE OF  
POLLUTANTS INTO WATERS OF THE  
UNITED STATES**

Title 33 U.S.C. §§ 1311(a), 1319(c)(2)(A);  
18 U.S.C. § 2 (Counts I and III)

(Penalty: Three years imprisonment, fine of  
not less than \$5000 nor more than \$50,000  
fine per day of violation, and one year  
supervised release)

**MALICIOUS MISHIEF –  
INJURY/DEPREDAATION OF  
PROPERTY OF THE UNITED STATES**

Title 18 U.S.C. §§ 1361, 2 (Count II)

(Penalty: Ten years imprisonment,  
\$250,000 fine, and three years supervised  
release)

## THE GRAND JURY CHARGES:

### INTRODUCTION

1. At all material times, JOSEPH DAVID ROBERTSON owned a patented mining claim known as the White Pine Lode, located in Jefferson County, Montana, and more specifically within the area depicted as the White Pine Lode property in Exhibit A attached hereto and made a part hereof.

2. At all material times, the property owned by JOSEPH DAVID ROBERSTON was roughly north of, and adjacent to, a property of the United States located in Jefferson County, Montana, and within the Beaverhead-Deerlodge National Forest, Jefferson Ranger District (National Forest System Lands or “NFSL”), and more specifically within the area depicted as NFSL property in Exhibit A.

3. At all material times, the NFSL were roughly north of, and adjacent to, a parcel of private property located in Jefferson County, Montana, known as the Manhattan Lode mining claim, and more specifically within the area depicted as the Manhattan Lode property referenced in Exhibit A.

4. Between and on or about October 2013 and October 2014, JOSEPH DAVID ROBERTSON conducted excavation activities with a tracked excavator to dig, excavate and construct a series of ponds along a tributary to Cataract Creek that flowed through the NFSL property. The pond construction activities caused

the discharge of pollutants, namely dredged and fill material, into the tributary and wetlands adjacent to the tributary.

5. Between and on or about November 2013 and May 2014, JOSEPH DAVID ROBERTSON conducted excavation activities with a tracked excavator to dig, excavate and construct a series of ponds along a tributary to Cataract Creek that flowed through the Manhattan Lode property. The pond construction activities caused the discharge of pollutants, namely dredged and fill material, into the tributary and wetlands adjacent to the tributary.

6. At all material times, the Clean Water Act prohibited the discharge of any dredged and fill material into waters of the United States, including wetlands, except in compliance with a permit issued pursuant to Section 404 of the Clean Water Act by the United States Army Corps of Engineers or by a state with an approved permit program. 33 U.S.C. §§ 1311(a) and 1344.

7. At all material times, under 33 U.S.C. § 1362(7), “navigable waters” meant “waters of the United States.”

8. At all material times, the tributary located on and flowing through the NFSL and Manhattan Lode properties was a seasonally flowing tributary to Cataract Creek.

9. At all material times, Cataract Creek was a tributary of the Boulder River.

10. At all material times, the Boulder River was a tributary to the Jefferson River, a traditionally navigable water, which was a “water of the United States” under 33 C.F.R. § 328.3(a)(1) and 40 C.F.R. § 122.2.

11. At all material times, the tributary that flowed seasonally through the NFSL and Manhattan Lode properties to Cataract Creek was a “water of the United States,” as defined under 40 C.F.R. § 328.3(a)(5) and 40 C.F.R. § 122.2.

12. At all material times, the NFSL and Manhattan Lode properties contained wetlands that were “adjacent,” as defined under 33 C.F.R. § 328.3(c), to the tributary to Cataract Creek.

13. At all material times, the wetlands adjacent to the tributary flowing through the NFSL and Manhattan Lode properties were “waters of the United States,” pursuant to 33 C.F.R. § 328.3(a)(7) and 40 C.F.R. § 122.2.

14. At all material times, the discharge of dredged and fill material into waters of the United States at the NFSL and Manhattan Lode properties was not authorized, nor was any permit authorizing such discharges obtained pursuant to 33 U.S.C. § 1344.

15. The excavation and pond construction activities conducted by JOSEPH DAVID ROBERTSON caused damages exceeding the sum of \$1,000 to the NFSL property.

COUNT I

16. Paragraphs 1 through 15 are realleged and incorporated here by reference.

17. Between and on or about October 2013 and October 2014, in Jefferson County, within the State and District of Montana and more specifically within the area depicted as National Forest System Lands in Exhibit A, the defendant, JOSEPH DAVID ROBERTSON, knowingly discharged and caused to be discharged a pollutant, namely dredged and fill material, from a point source or point sources, into a water of the United States, without a permit issued under 33 U.S.C. § 1344, in violation of 33 U.S.C §§ 1311(a) & 1319(c)(2)(A), and 18 U.S. C. § 2.

COUNT II

18. Paragraphs 1 through 15 are realleged and incorporated here by reference.

19. Between and on or about October 2013 and October 2014, in Jefferson County, within the State and District of Montana and more specifically within the area depicted as National Forest System Lands in Exhibit A, the defendant, JOSEPH DAVID ROBERTSON, willfully injured and committed depredation of property of the United States, namely National Forest Service

Lands, causing damage to the property exceeding the sum of \$1,000, in violation of 18 U.S.C. § 1361, and 18 U.S.C. § 2.

COUNT III

20. Paragraphs 1 through 15 are realleged and incorporated here by reference.

21. Between and on or about November 2013 and May 2014, in Jefferson County, within the State and District of Montana and more specifically within the area depicted as the Manhattan Lode property in Exhibit A, the defendant, JOSEPH DAVID ROBERTSON, knowingly discharged and caused to be discharged a pollutant, namely dredged and fill material, from a point source or point sources, into a water of the United States, without a permit issued under 33 U.S.C. § 1344, in violation of 33 U.S.C §§ 1311(a) & 1319(c)(2)(A), and 18 U.S. C. § 2.

A TRUE BILL.

Foreperson signature redacted. Original document filed under seal.

  
MICHAEL W. COTTER  
United States Attorney

  
JOSEPH E. THAGGARD  
Criminal Chief Assistant U.S. Attorney

Crim. Summons X

Warrant: \_\_\_\_\_

Bail: \_\_\_\_\_

June 11, 2015 10:00am  
JCL/misoula